

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30050

Ordinance No. 3620 Passed 11-28, 2017

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$1,330,000 VARIOUS PURPOSE REAL ESTATE ACQUISITION BOND ANTICIPATION NOTES, 2017 RENEWAL, BY THE CITY OF WEST CARROLLTON, OHIO IN ANTICIPATION OF THE ISSUANCE OF BONDS, PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH NOTES, AND DECLARING AN EMERGENCY.

WHEREAS, the fiscal officer (hereinafter called "Finance Director/Clerk") of the City of West Carrollton (hereinafter called the "City") has heretofore estimated that the life of the hereinafter described improvements is at least five (5) years, and certified that the maximum maturity of the bonds is thirty (30) years, and of the notes to be issued in anticipation thereof is twenty (20) years; and

WHEREAS, the Council of the City of West Carrollton, County of Montgomery, Ohio (the "Council") has previously issued notes currently outstanding in the amount of \$1,400,000 which are about to mature and which should be renewed in a like principal amount; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of West Carrollton, County of Montgomery, Ohio (the "Council") at least five (5) members elected thereto concurring:

SECTION 1. That it is hereby declared necessary to issue bonds of the City of West Carrollton, County of Montgomery, Ohio, in the principal amount of not to exceed \$1,330,000, bearing interest estimated at seven per centum (7%) per annum and maturing over a period of twenty-six (26) years for the purpose of acquiring real estate in the City for economic development purposes, under authority of the general laws of the State of Ohio, and all necessary costs in connection therewith.

SECTION 2. That it is hereby determined that notes (hereinafter called the "Notes") in the principal amount of not to exceed \$1,330,000 shall be issued in anticipation of the issuance of said bonds.

SECTION 3. Said Notes of the City of West Carrollton shall be issued under the provisions of the Ohio Revised Code, in the principal amount of \$1,330,000. Said Notes shall be dated as of their date of issuance, be payable at maturity, and shall mature on such date, not later than one year from their date of issuance, as is selected by the Finance Director/Clerk, without call for prior redemption. Said Notes shall bear interest at such rate not to exceed five percent (5.00%) per annum, as accepted by the City Manager or the Finance Director/Clerk, and shall be of such number and denomination as requested by the purchaser. The final terms of the Notes shall be set forth in a Certificate of Award which is hereby authorized and which shall be executed by the Finance Director/Clerk without further legislative action of this Council.

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SECTION 4. That the Notes shall be executed by the City Manager and the Finance Director/Clerk and may but shall not be required to bear the seal of the corporation provided that either (but not both) of such officers' signatures and the seal may be facsimiles. The Notes shall be designated "Various Purpose Real Estate Acquisition Bond Anticipation Notes, 2017 Renewal", and shall be payable at a bank or trust company designated by the Finance Director/Clerk and acceptable to the purchaser, and shall express upon their face the purpose for which they are issued and that they are issued in pursuance of this Ordinance.

The Notes shall bear the manual authenticating signature of an authorized representative of the Paying Agent and Registrar, which shall be such bank or trust company as is selected by the Finance Director/Clerk to act, as paying agent, registrar and transfer agent (the "Paying Agent and Registrar") for the Notes as set forth in the Note Purchase Agreement. The principal amount of each Note shall be payable at the office of the Paying Agent and Registrar, and interest thereon shall be paid at maturity.

The Notes shall be transferable by the registered holder thereof in person or by his attorney duly authorized in writing at the principal office of the Paying Agent and Registrar upon presentation and surrender thereof to the Paying Agent and Registrar. The City and the Paying Agent and Registrar shall not be required to transfer any note during the 15-day period preceding the maturity date, and no such transfer shall be effective until entered upon the registration records maintained by the Paying Agent and Registrar. Upon such transfer, a new note or notes of authorized denominations of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange therefor.

The City and the Paying Agent and Registrar may deem and treat the registered holder of the Notes as the absolute owner thereof for all purposes, and neither the City nor the Paying Agent and Registrar shall be affected by any notice to the contrary.

SECTION 5. That the Notes shall be sold at not less than 97% of par plus accrued interest at private sale by the Finance Director in accordance with law and the provisions of this Ordinance. The Finance Director shall, in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and conditions then existing in the financial markets, establish the purchase price of the Notes, the interest rate to be borne by the Notes, the maturity of the Notes, sign the Certificate of Award referred to in Section 3 evidencing that sale to the Original Purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The City Manager, the Finance Director, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Director of Budget and Finance is authorized, if it is

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determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code; provided that no Note of that consolidated issue shall be issued in a denomination less than \$100,000.

The Finance Director is hereby authorized to offer all of the Notes at par to the Treasury Investment Board of the City for investment in the City's General Fund, pursuant to Section 731.56 of the Revised Code, in accordance with law and the provisions of this Ordinance if, as a result of the conditions then existing in the financial markets, the Finance Director determines it is in the best financial interest of the City in lieu of the private sale authorized in the preceding paragraph. This Council determines, pursuant to Section 731.56 of the Revised Code, that the money in the General Fund to be used to purchase the Notes will not be required to be used by the City for a period of six (6) months or more from the date of sale of the Notes. If the Notes are sold to the Treasury Investment Board of the City, the Notes will be sold at a purchase price of 100% of the principal amount of the Notes, which this Council determines is the current market value of the Notes.

The Finance Director must state in the Certificate of Award the principal amount of the Notes, the initial interest rate on the Notes, and any other terms required by this Ordinance.

SECTION 6. That the Notes shall be special obligations of the City, and only revenue of the City received from sources other than moneys raised by taxation including, proceeds realized from the sale of the Project (as hereinafter defined) are pledged for the payment of the same (the "Revenues"). The par value received from the sale of bonds anticipated by the Notes, and any excess fund resulting from the issue of the Notes, shall, to the extent necessary, be used only for the retirement of the Notes at maturity, together with interest thereon and is hereby pledged for such purpose.

The payment of the principal of, premium, if any, and interest on the Notes, as well as any "Parity Notes" heretofore or hereafter issued as provided for in Section 13 hereof, is secured by a pledge of and lien on the Revenues on deposit in the Note Retirement Account, as described below. The City has heretofore created a separate account designated "Note Retirement Account" into which Revenues shall be deposited on or prior to the respective dates that the principal of, premium, if any, and interest on the Notes and any Parity Notes are due in an amount sufficient to pay the principal of, premium, if any, and interest on the Notes and any such Parity Notes.

The Revenues shall include (a) grants from the United States of America and the State of Ohio; (b) payments in lieu of taxes now or hereafter authorized by any statute of the State of Ohio to the extent not pledged to pay debt charges on other City indebtedness; (c) fines and forfeitures which are deposited in the City's General Fund; (d) fees deposited in the City's General Fund for services provided and from properly imposed licenses and permits; (e) investment earnings on the City's General Fund and which are credited to the City's

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General Fund; (f) investment earnings on other funds of the City that are credited to the City's General Fund; (g) proceeds from the sale of assets which are deposited in the City's General Fund; and (h) gifts and donations. Payment of the principal of, premium, if any, and interest on the Notes is specifically secured by a pledge of and lien on the proceeds from the sale or lease of all or a portion of the real estate and the accompanying real property improvements purchased with the proceeds of these Notes.

In order to better secure the payment of the principal of, premium, if any, and interest on the Notes as the same shall become due and payable, the City Manager and the Finance Director/Clerk are each authorized and directed to take any and all actions and to execute such documents, financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Thompson Hine LLP ("Thompson Hine"), as Bond Counsel, in order to perfect the pledge of and to secure the Revenues for the benefit of the Noteholders and to effect the issuance of the Notes and to the intent of this Legislation.

The Notes are not general obligations of the City; Noteholders shall have no right to have any taxes levied or collected for the repayment of the Notes.

Anything in this legislation or the Notes notwithstanding, neither this legislation nor the Notes constitute a debt, or a pledge of the faith or credit, or taxing power of the City, the State or any political subdivision thereof, and the holders or owners of the Notes shall have no right to have taxes levied by the City, the General Assembly of the State, or the taxing authority of any political subdivision of the State for the payment of the principal of and interest on the Notes, and the Notes shall contain on their faces a statement to that effect. Nothing herein shall be deemed to prohibit the City from lawfully using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this legislation or the Notes.

SECTION 7. The funds derived from the sale of the Notes and bonds authorized by this Ordinance become and they are hereby set aside and appropriated for the payment as described in this Ordinance.

SECTION 8. The proceeds of the sale of the Notes, less the underwriting discount of Underwriter, plus other lawfully available funds of the City, and except for accrued interest, shall be used as follows:

(a) the amount as set forth in the Certificate of Award to be used to pay all costs and items of expense incurred by the City in connection with the issuance of the Notes, including without limitation costs of bond counsel and other legal, accounting and management services and services of other consultants and professional and related charges, fees and disbursements; bond rating fees; costs of issuance; printing and reproduction costs; filing and recording fees; initial fees and charges of the Paying Agent and Registrar; and costs of preparation, execution, transportation and safekeeping of the Notes (the "Cost of Issuance").

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The City shall transfer to the Note Retirement Account any moneys remaining in the Cost of Issuance allocation upon determination by the Finance Director/Clerk that all the costs described above have been received and paid by the City; and

(b) the remainder of the proceeds shall be used to retire notes originally issued for the acquisition of the property (the "Project").

Any accrued interest on the Notes shall be transferred to the Note Retirement Account and shall be applied only to the payment of the interest and principal of the Notes and for no other purpose.

SECTION 9. From and after the date of issuance of the Notes, the annual Revenues shall first be used to pay Annual Debt Service (as hereinafter defined) on the Notes and on any Parity Notes (as hereinafter defined) and then shall be used for any legal purpose of the Revenues.

For that purpose, in each year while the Notes and any Parity Notes are outstanding, this Council, after providing for the payment of the principal of, premium, if any, and interest payable on the City's general obligation securities in that year from sources available for that purpose, will appropriate Revenues required to pay, and for the purpose of paying, the Annual Debt Service on the Notes and any Parity Notes due in that year. Further, this Council will give effect to such appropriations in all ordinances it passes thereafter in that year appropriating money for expenditure and encumbrance and limit the other appropriations of Revenues in that year to the amount available after deducting the amount required for the payment of the principal of, premium, if any, and interest payable on the City's general obligation securities and to pay the Annual Debt Service on the Notes and any Parity Notes.

Annual Debt Service shall be the annual interest due on the Notes plus an amount equal to a principal payment as if the Notes had been issued as 20 year Bonds.

SECTION 10. That sums which are expended from the above appropriations and which are proper charges against and are repaid by any other department, any firm, person, or corporation, shall be considered reappropriated for such original purpose; provided that the total appropriation as increased by any such repayment shall not be exceeded.

SECTION 11. That the Finance Director/Clerk of the City of West Carrollton be and he is hereby authorized to draw his warrants of the City Treasury or Depository for payments from any of the foregoing appropriations upon receiving proper approval in accordance with the Charter, the Administrative Code, or other ordinances of the City of West Carrollton.

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SECTION 12. Interest on the notes hereby authorized shall be subject to federal income taxation under the Internal Revenue Code of 1986, as amended, unless the notes are accompanied by an opinion of nationally recognized bond counsel to the effect that such interest is exempt from federal income tax.

SECTION 13. So long as any Notes are outstanding, the City shall have the right to issue, on a parity with the Notes, any additional notes, bonds, or other obligations payable from the Revenues enumerated in Section 6 above (the "Parity Notes") so long as such Revenues are at least 2.5 times the annual debt service on the Notes and any Parity Notes, including such additional Parity Notes as are outstanding as of the date of the issuance of the Notes. The City shall also have the unrestricted right to issue additional notes, bonds or other obligations subordinate to the Notes, or payable from taxes or other revenues of the City, other than the sources enumerated in Section 6 above.

SECTION 14. The City hereby covenants and agrees with the holders of the notes from time to time, so long as any notes are outstanding, as follows:

(a) The City will, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purpose of the notes and this legislation.

(b) All of the obligations set forth and covenants made under this legislation are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the City within the meaning of Section 2731.01 of the Ohio Revised Code.

(c) The City will observe and will satisfactorily and punctually perform all its agreements and obligations provided for by the notes and this legislation.

SECTION 15. That the Finance Director/Clerk is hereby authorized to apply, if he deems it appropriate, for a rating on the Notes from either Standard & Poor's Corporation or Moody's Investors Service, and to pay the fee for said rating to the extent authorized by law and approved by bond counsel.

SECTION 16. The Finance Director/Clerk is hereby further authorized to take such actions as may be reasonably requested by the purchaser of the Notes in order to make the Notes eligible for the services of The Depository Trust Company, New York, New York.

SECTION 17. All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such closing certificates, financing statements and other instruments or agreements as are, in the opinion of bond counsel, necessary or appropriate, in order to effect the issuance of the Notes and to carry out the purposes of this Ordinance.

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SECTION 18. That the firm of Thompson Hine is hereby engaged as the City's "Bond Counsel" for the Notes. The legal services will be in the nature of legal advice and that recommendations as to the documents and the proceedings in connection with the issuance and sale of the Notes and rendering legal opinions upon the delivery of the Notes. Bond Counsel must be paid just and reasonable compensation for those legal services and will be reimbursed for actual out-of-pocket expenses it incurs in rendering those legal services.

SECTION 19. That the Finance Director/Clerk is hereby directed to forward a certified copy of this Ordinance to the County Auditor.

SECTION 20. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 21. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety in the City for the reason that the immediate issuance of said notes is required to provide for the timely financing of the Project including obtaining a favorable interest rate, and it shall take effect immediately upon its adoption.

ADOPTED: November 28, 2017.

Attest:

Tom Reilly  
Finance Director/Clerk

Jeff Sanner  
Mayor

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## CERTIFICATE

The undersigned, Finance Director/Clerk, West Carrollton, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 3620 adopted November 28, 2017.

\_\_\_\_\_  
Finance Director/Clerk

## CERTIFICATE

The undersigned, Finance Director/Clerk, West Carrollton, Ohio, hereby certifies that Ordinance No. 3620 was filed with the County Auditor of Montgomery County, Ohio, on \_\_\_\_\_, \_\_\_\_\_, 2017.

\_\_\_\_\_  
Finance Director/Clerk

## RECEIPT

The undersigned, County Auditor of Montgomery County, Ohio, acknowledges receipt of Ordinance No. 3620 of the City of West Carrollton, Ohio, on \_\_\_\_\_, \_\_\_\_\_, 2017.

\_\_\_\_\_  
County Auditor



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## EXTRACT FROM MINUTES OF MEETING

The Council of the City of West Carrollton, Ohio, met in regular session, at 6:30 p.m., on the 28<sup>th</sup> day of November, 2017 at City of West Carrollton Council Chambers, with the following members present:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

There was presented and read to Council Ordinance No. 3620, entitled:

*AN ORDINANCE PROVIDING FOR THE ISSUANCE OF \$1,330,000 VARIOUS PURPOSE REAL ESTATE ACQUISITION BOND ANTICIPATION NOTES, 2012 RENEWAL, BY THE CITY OF WEST CARROLLTON, OHIO, IN ANTICIPATION OF THE ISSUANCE OF BONDS OF THE CITY, PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH NOTES, AND DECLARING AN EMERGENCY.*

M\_. \_\_\_\_\_ moved to suspend the rule requiring each ordinance to be read on two different days. M\_. \_\_\_\_\_ seconded the motion and, the roll being called upon the question, the vote resulted as follows:

M\_. \_\_\_\_\_ then moved that Ordinance No. 3620 be adopted. M\_. \_\_\_\_\_ seconded the motion and, the roll being called upon the question, the vote resulted as follows:

The Ordinance was declared adopted November 28, 2017.

## CERTIFICATE

The undersigned, Finance Director/Clerk of the City of West Carrollton, hereby certifies that the foregoing is a true and correct extract from the minutes of a meeting of the Council of said city, held on the day of November \_\_\_\_, 2017, to the extent pertinent to consideration and adoption of the above-entitled obligation.

\_\_\_\_\_  
Finance Director/Clerk

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Passed \_\_\_\_\_, 20\_\_\_\_